

FILED

JUL 27 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESUS GILES-MARTINEZ,

Defendant - Appellant.

No. 05-30322

D.C. No. CR-05-00045-FVS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of Washington
Fred L. Van Sickle, Chief Judge, Presiding

Submitted July 24, 2006^{**}

Before: ALARCON, HAWKINS, and THOMAS, Circuit Judges.

Jesus Giles-Martinez appeals from his sentence imposed following his guilty plea conviction for unlawful reentry of a deported alien, in violation of 8 U.S.C. § 1326. Giles-Martinez contends the district court violated the Sixth

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Amendment by increasing his term of imprisonment based on his prior conviction, which was never admitted by him during his plea colloquy, nor proved beyond a reasonable doubt to a jury. He also contends that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), is no longer good law in light of the intervening Supreme Court decision *Shepard v. United States*, 544 U.S. 13 (2004). These contentions are foreclosed. *See United States v. Beng-Salazar*, 2006 WL 1843394 (9th Cir. 2006) (rejecting after *Shepard* the specific contention that a section 1326(b) enhancement cannot be applied where the defendant did not admit the prior conviction during a guilty plea); *United States v. Weiland*, 420 F.3d 1062, 1080 n.16 (9th Cir. 2005) (holding that we are bound to follow *Almendarez-Torres* even though it has been called into question, unless it is explicitly overruled by the Supreme Court).

AFFIRMED.